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NOTIFICATION.

L2-10448|52|DD.

The award of the Industrial Tribunal, Trivandrum in the Industrial Dispute between the Managing Agents, The A. D. Cotton Mills, Ltd., Quilon and the workmen of the above Mills represented by 1. The Quilon Textile Workers Union, Quilon, 2. The Quilon Cotton Mill Workers Union, Quilon, 3. The A. D. Cotton Mills Machinery Staff Workers Association, Quilon and 4. The Quilon Cotton Mill Staff Association, Quilon received by Government on 30-8-1954 is hereby published as required under Section 17 of the Industrial Disputes Act 1947 (Central Act XIV of 1947).

Government Secretariat,
Development Department,
Labour Section,
Trivandrum, 2-9-1954.

By order of His Highness
the Raj Pramukh,

K. NARAYANA MENON,

Addl. Secretary to Government.

33-1417|B

BEFORE

SRI K. N. KUNJUKRISHNA PILLAI
INDUSTRIAL TRIBUNAL
QUILON.

INDUSTRIAL DISPUTE No. 7 of 1952

BETWEEN

The Managing Agents
The A. D. Cotton Mills Ltd., Quilon

AND

The Workers of the Mill
Represented by

(1) The Quilon Textile Workers' Union,
(2) The A. D. Cotton Mill Machinery Staff Workers' Association,
(3) The Quilon Cotton Mill Workers' Union,
(4) The Quilon Cotton Mill Staff Association.

Representations:

1. Sri R. Ramalingam Iyer, Advocate, 2. Sri David, Secretary of A. D. Cotton Mills Ltd.	On behalf of the Managing Agents of the A. D. Cotton Mills Ltd.
3. Sri T. K. Divakaran, M. L. A. 4. Sri N. Srikantan Nair, M. A., M. P.	On behalf of the Quilon Textile Workers' Union and the A. D. Cotton Mill Machinery Staff Workers' Association.
5. Sri A. Sankara Pillai.	On behalf of the Quilon Cotton Mill Workers' Union.
6. Sri S. G. Josua, Advocate.	On behalf of the Quilon Cotton Mill Staff Association.

AWARD.

The Government of Travancore-Cochin had by their order L. 2-10448/52/DD dated 29-8-1952 referred certain disputes between the above parties for adjudication and the same was registered as Industrial Dispute No. 7 of 1952 in the file of the Industrial Tribunal Quilon. The Managing Agents of the A. D. Cotton Mills Ltd. (which will be referred to hereinafter

as the Managing Agents) was represented by one of its Directors Sri C. S. Sankara Menon who has passed away during the course of the adjudication and Sri R. Ramalingam Iyer advocate is appearing since then. Sri T. K. Divakaran and Sri N. Srikantan Nair are representing the workmen on behalf of the Quilon Textile Workers' Union and the A. D. Cotton Mill Machinery Staff Workers' Association and the former was actually prosecuting the adjudication on behalf of the workers with earnestness and Sri Srikantan Nair has argued the dispute partly. It seems that the representatives of the other Union and Association are under the impression that they have discharged their duty by simply filing the statement of their cases probably due to the reason that there are others who will be earnest in the discharge of their duty towards the workers. The Vice-president of the A. D. Cotton Mill Machinery Staff Workers' Association and the President of the Quilon Textile Workers' Union have filed separate statements on 15-10-1952; the President of the Quilon Cotton Mill Workers' Union and the President of the Quilon Cotton Mill Staff Association have filed separate statements on 20-9-1952. The Managing Agents have filed their reply statement on 6-11-1952 and the replication was filed by the Staff Association as well as the Quilon Cotton Mill Workers' Union on 26-11-1952. Sri T. K. Divakaran has examined one witness and filed Exhts. A to W and the Managing Agents examined three witnesses and Exhibits I to XIII. The only issue to be decided in this case is: "Whether the employees of the A. D. Cotton Mills Ltd. Quilon are entitled to any bonus for the years 1949 to 1950, 1950 to 1951 and 1951 to 1952? If so at what rates?".

2. There has been some delay in the disposal of the main dispute due to the reason that there were petitions filed by the management under Section 33 of the Act and the disposal of these petitions then and there became urgent for the further progress of the main dispute. In fact the parties examined most of the witnesses and filed documents for the purpose of the disposal of such petitions. One Industrial Tribunal was appointed for the adjudication of an industrial dispute from this concern in 1948. The workers involved in this dispute are represented by four organisations manned by different political parties. Industrial disquiet is a matter of common occurrence in this concern.

3. This mill was started in 1932-33 with an authorized share capital of 5 lakhs of Rupees and the paid up capital was only Rs. 2,50,000. The authorised share capital was increased in 1948 to Rs. 17½ lakhs. Sri Gridharlal Amrithlal is one of the directors of the mills the others being the deceased Sri C. S. Sankara Menon and Sri Doulatram Thakur who is the manager of the A. D. Cotton Mills. Sri Gridharlal Amrithlal owns 15% of the shares and his relatives including daughter and sons own a major portion of the shares. It is definite that none of the citizens of Travancore-Cochin State owns any share. Gridharlal Amrithlal Ltd.

(G & A. Ltd.) is the managing agents of the A. D. Cotton Mills and EW2 the Managing Director. There is another concern by the name Gridharlal Amrithlal & Co. (G. A. & Co.) who are the managing agents of both A. D. Cotton Mills and G. A. Ltd. and G. A. & Co. is a proprietory concern. While the working capital of G. A. Ltd., is Rs. 800 there is no working capital for G. A. & Co. which is admittedly doing no business. So it is clear from the deposition of Sri Gridharlal Amrithlal (EW2) that he is the man running the whole show and it should be admitted that EW2 is the person of vast resources, business capacity and far-reaching vision in industrial enterprises. G. A. Ltd. has a commission to the extent of 20% of the net profits over and above Rs. 36,000 per year as allowances.

4. Out of the authorised shares of 17,500 (of Rs. 100 each) only 2500 shares have been sold and a lion share was purchased by EW2 and his kith and kin and above 5000 shares were converted into bonus shares. From the trading prospect of the previous years an amount of Rs. 1.90,000 was appropriated for distribution as dividend and Rs. 27,000 were appropriated for reserve fund etc. over and above Rs. 4·3 lakhs outstanding under reserve, but bonus given was 4% of the wages of the workers.

5. I have narrated the above circumstances to show the back ground and the part played by EW2 and workers in the prosperity of the concern. I will discuss the issue.

6. The issue relates to the bonus for the years 1949-1950, 1950-1951, and 1951-1952. For brevity sake I will mention the bonus for the year 1949-1950 as for bonus for 1950 and so on. At the out set it is contended by Sri Ramalingam Iyer on behalf of the management that the demand of bonus for the year 1950, and 1951 is a belated one because there was no demand by the workers. He relies on Exht. IV to Exht. IX to conclude that it was a settled matter. Both Sri Srikantan Nair and Sri Divakaran would assert that no bonus was paid to the workers for the years 1950 and 1951 and in the conciliation conferences this issue was raised as the workers demanded it previously. Both messrs Srikantan Nair and Divakaran who are members of the Parliament and Assembly respectively were prepared to swear that the demand was made and it was refused and it was discussed in the conciliation conferences. But for the report of the Conciliation Officer to Government, the Government would not have referred the question for adjudication. They are responsible persons and there is no reason to disbelieve them. Further it is definite that Government might have felt that there was dispute between the parties regarding bonus for the years and in the absence of evidence on the contrary I cannot uphold the preliminary object of Sri Ramalingam Iyer.

7. The demand of the workers is that 25% of the total earnings of the workers for the year should be paid as bonus for the three years in question. The contention of the management is that the workers are not entitled to claim bonus for the years 1950 and

1951 as there was no profits in these years and regarding bonus for the year 1952 there is no surplus from the profit to be distributed as bonus after applying the decision of the Hon. Labour Appellate Tribunal in Appeal Nos. 1 and 5 of 1950 reported in 1950 II L. L. J. 1241 (which will be mentioned as Full Bench Formula hereinafter).

8. It is seen from the balance sheet for the year 1950 and 1951 (Exhts. I and II) that the loss for the year 1950 and 1951 are Rs. 23,611 and Rs. 16,164 respectively and hence primafacie the Full Bench Formula cannot be applied for the years. But Sri, Srikantan Nair would submit the following circumstances for the position that the workers are entitled to get bonus eventhough there is loss, according to profit and loss account prepared by the company.

9. (i) After the managing agents knew that distribution of bonus depends upon profit earned, the balance sheets were prepared in such a way as to show only losses. To illustrate this Sri. Srikantan Nair has stated that the question of bonus for the year 1948 was referred for adjudication to the Industrial Tribunal, Trivandrum on 6-1-1949 for the first time. The Hon. Tribunal found that since there was profit in that year bonus to the extent of 7 per cent. of the earnings of the workers in that year should be given as bonus. This was decided in August 1950 and this was confirmed by the Hon. Labour Appellate Tribunal towards the end of 1950 after the decision in Appeals Nos. 1 and 5 of 1950. It is contended on behalf of the workers that after these decisions by the authorities the management had prepared the balance sheet in such a way as to see that there would be only loss and not profit. While there was substantial profit from 1939-1949 suddenly there is swing to the opposite direction in 1950 showing the loss of Rs. 23,614. According to the workers' representative it is wilfully done to deprive the workers of their legitimate bonus after having learned from adjudication experience that bonus need be paid only if there is profit. While the allegation is denied it is not pointed out sufficiently convincingly the reasons for this. Anyhow it is seen from the balance sheet of 1949 and 1950 that money worth of about Rs. 5 lakhs is invested in the Bonus Shares and big amounts appropriated for reserves, dividends in the year 1949. The authorised capital was increased from 5000 to 17500 shares in 1949 and dividend was declared to the extent of 100% with the result that about Rs. 5 lakhs was capitalised and ploughed back. It is also to be noted that in 1950 a sum to tbe extent of Rs. 1,12,500 was declared as dividend. Though I am not prepared to believe that the managing agents prepared the balance sheet in the period between 1948 to 1950 wilfully in such a way as to deprive the workers of their legitimate due, it is clear that there are circumstances to show that one has to read between lines in the balance sheets before concluding that 1950 and 1951 are loss years.

10. (ii) It is admitted both by EW2 and EW3 that the machinery in the mill is worn out. EW3 is the manager of the mills and is a man having 30 years experience in textile line. He says: "The machinery at present is very much worn out and needs replacement......... The purchase of the machinery was made before I came." He joined the mill in 1933. He again says "Except few machines purchased in 1945 and 1946 all are worn out. With these machines we are getting 15 to 20% less than what we would get with new machinery. The present production is 15 to 20%less..........If the machinery were knew the spindles would be working at 10,000 spindles speed. What we are now working is between 8200 and 9000. So it is about 15%less in production......As it is now the worn out condition of the machinery affect production." Sri Gridharlal Amrithlal who is EW2 says in his deposition as "Our machinery are very old 20 to 30 years. I am definitely of the opinion that all the machinery except the four ring frames are worn out." I have quoted the above passages from the depositions of EW3 and EW2 just to show that the machinery is worn out. Exht. A to S (except Exht. H) are balance sheets and profit and loss statements for the years 1933 to 1949. It can be seen from these documents that the trading conditions are satisfactory inasmuch as they have resulted in profit for all the years. It can also be seen that trading conditions are prosperous especially in the latter years. A careful scrutiny of the balance sheet for the years 1947, 1948 and 1949 will reveal the fact that out of the accumulated profits the managing agents were able to issue shares to the extent of Rs. 5,00,000 after providing substantial sums for reserves and depreciation. The managing agents namely G. A. Ltd. who have a capital of Rs. 800 only and who do not do other work could lend an amount of Rs. 2,52,190 to the mill in 1948. To a question put to EW2 by Sri. Divakaran "In Exht. R report the accumulated profit to the extent of Rs. 5 lakhs belonging to the share-holders were capitalised why was it not provided for rehabilitation ?" EW2 answers "As the paid-up capital prior to that was only Rs. 2½ lakhs and the expenditure for building, machinery, electric power etc., was nearly Rs. 10,00,000 so to bring the paid-up capital nearer to the fixed assets this was capitalised". If as EW2 says that the increase of fixed assets is the only reason for capitalising Rs. 5 lakhs in bonus shares I cannot accept the explanation because fixed assets is increased from 9·87 lakhs to 10·33 lakhs in 1949. So it is suggested strongly by Sri Divakaran that the motive of the managing agents in accumulating profits and appropriating huge amounts under different heads giving huge dividends and issuing bonus shares was to keep the machinery in the worn out condition thereby depriving the workers of their legitimate dues after extracting 'their blood and sweat' for the improvement of the concern. It is also deposed by EW2 that even though the machinery was worn out there is no wage decrease which necessarily means that there should be increase of cost of production which affects the net result. It is also suggested by the

representative of the workers at the argument stage that the period of 1948-1950 was a difficult period in the relationship between management and workers as there was strikes, lock-outs and the consequential ill-feeling between the parties. I am at a loss to accept the suggestion of Shri Divakaran that EW2 was notoriously inimical towards the workers and that he has manipulated the balance sheet in the year 1949-1950 in such a way as to hit the workers hard. Whatever may be the reasons it is found that the trading conditions in the year 1949-1950 resulted in a loss to the extent of Rs. 23,614.

11. (iii) As I have stated above it is the contention of the workers that proper steps have not been taken by the management for rehabilitation and replacement of the machinery in time. But the management would submit that there was no sufficient funds for the purpose. After going through the evidence and hearing the arguments it seems to me that there is some force in the argument of the representative of the workers. It is admitted by the management that the machinery is worn out and EW2 says that he come to know about it only in March 1949. EW3 who is in actual touch with the plant should have informed the managing agents about the necessity of the replacement and rehabilitation then and there. Exht. X is a statement showing cost of machinery and other materials necessary for rehabilitation and the cost comes to about Rs. 48 lakhs. EW2 says that "My idea is to raise funds for rehabilitation from the profit." That being so I think it will take a few years for completion of rehabilitation of the worn-out machinery of the mill and necessarily the workers will have to wait indefinitely for bonus after applying the Full Bench Formula. So it comes to that the workers have to work in the worn-out machinery hard to produce sufficient profits so as to derive bonus. To reach that consummation the workers will have to wait for years to come. This according to me is a peculiar circumstance not common in most of the industrial concerns in the State. I do not find fault with EW2 for this state of affairs. While EW2 both in the capacity of G. A. Ltd., the managing agents and owner of a major portion of the shares and the other shareholders get their share in the prosperous condition of the concern the worker alone cannot hope to get it eventhough he works hard. This attitude is exemplified in Exht. IX which is a statement prepared by the management after applying the principles enunciated in the Full Bench Formula with the result that there is a deficit of about Rs. 2.98 lakhs. This Exht. IX was presented before the Labour Commissioner when the question of bonus in the year 1952 was discussed between the parties. So I must think this peculiar circumstance was made use of by the management in refusing bonus eventhough there was profit according to the trading condition.

12. (iv) It is strongly urged by the representative of the workers that another important circumstance is that there is an

agreement between the parties. The resolution of the Tripartite Labour Conference held in October 1946 and September 1948 is the agreement. I have to deal with this aspect in detail.

13. Due to pre-war conditions the agitation for Responsible Government in the erstwhile Travancore State there was complete disquiet in the industrial concerns of the State and then Travancore Government called for a Tripartite Labour Conference of the representatives of the employers and workers. In this conference the employers were represented by 11 delegates including EW2 and workers were represented by 11 delegates including Messrs. Srikantan Nair and Divakaran and the Government was represented by 9 officers including the Labour Commissioner and the then Dewan of the State presided over the conference on 7th October 1946. The proceedings of the conference is marked as Exht. H. It is an interesting reading of the situation prevailed in the State and how far the Government and the representatives of the parties were eager to have industrial peace in the country. This is followed by another conference which is said to be the Second Session of the Tripartite Labour Conference in 1948 after dawn of Responsible Government in the State under the presidentship of the then Labour Minister. The copy of the proceedings of this conference held on 22nd and 23rd September 1948 is marked as Exht. H(a). This second conference was held for the purpose of considering the famous "Industrial Truce Resolution" passed at the Industies Conference held in December 1947 at New Delhi by the Government of India. It is seen from Exht. H that both Sri. Gridharlal Amrithlal and Sri Srikantan Nair were active members of the conference as they both represented the counter-parts of the textile industry in the State. The question of bonus was elaborately discussed in this conference in all its aspects. It is seen that the representatives of the Labour effectively voiced their idea of bonus that "the workers should be assured of a minimum statutory rate of bonus along with a portion of the profits which may accrue to the industry by the joint efforts of capital and labour." The view of the employers was strongly stressed by none other than Sri Gridharlal Amrithlal when he said in the conference that "bonus should be paid on the basis of profits earned by the business." The idea that bonus should be paid on the basis of profit earned by the business is strongly objected to by the representatives of labour in general and Sri. T.V. Thomas (another labour representative) in particular on two grounds namely (1) the worker is not given living wages and (2) Indian labour is not in the habit of earning. After discussing the point for two days a sub-committee was appointed by the conference to consider and make definite proposals on the payment of bonus to the labour consisting of two representatives from the labour and capital, with Labour Commissioner. Sri Srikantan Nair is one of the sub-committee members. It has to be mentioned that the then Labour Commissioner was a trade union worker before he became the Labour Commissioner and has undergone training in the subject both in U. K. and

and in other Western Countries. The sub-committee after careful consideration submitted an agreed resolution to the conference which again discussed the matter and passed the following resolution: "That every worker in all organised industries should be given annually a lump-sum payment amounting to an absolute minimum of 4% of his total earnings in the year." Another sub-committee was appointed by the conference to implement this resolution in which both Sri. Srikantan Nair and Sri. Gridharlal Amrithlal were members. In this connection it should also be noted that the President of the conference made it clear to the conference that the above resolution would not bind the Government as far as the factories managed and owned by them. As can be seen from Exht. H (a) this resolution was ratified by the conference held in 1948. It is seen from the Exht. H (a) proceedings that important concerns were implementing the resolution and the complaint was that Government did not implement it. What ever that may be the only point to be noted is that both capital and labour in a spirit of give and take and also actuated with best of intention wanted to establish industrial peace which alone can advance industrial progress in the country. It is pointed out by Sri. Divakaran that almost all employers who were represented in the conferences are still now adhering to the very letter and spirit of the resolution even after the Full Bench Formula.

14. This resolution of the Tripartite Labour conference is a solemn declaration undertaken by the representative of the capital, labour and Government and my view is that much sanctity has to be attached to this resolution. After reading the whole proceedings of the two conferences it struck me that the resolutions including one stated above mark a milestone in the collective bargaining capacity of both capital and labour with a view to establish industrial peace in the State. I can understand Sri. Ramalingam Iyer's argument that it is not a statutory obligation thrown on the employers. True, but it is a gentleman's agreement arrived at after mature deliberation by the representatives of all important industries in the State for the purpose of establishing industrial peace and prosperity. Sri Iyer would again argue that this resolution can not stand after the authoritative announcement of the Honourable Labour Appellate Tribunal when they enunciated the Full Bench Formula taking into consideration an overall picture in India and that Lower Tribunal are bound to obey the ruling. There is much force in the argument, because a Full Bench decision can be modified only if there is a decision by a larger Bench or a Legislation or an agreement between the parties. I will consider this in detail.

15. The Full Bench Formula was laid down towards the end of 1950 by the Honourable Labour Appellate Tribunal and the Tripartite Labour Conference resolution (which will be mentioned as 'resolution' hereinafter) was passed in 1946 and subsequently ratified in 1948. There is absolutely no doubt in

my mind that Full Bench Formula has to be accepted in calculating available surplus for distribution as bonus. In the judgment pronounced by the Honourable Labour Appellate Tribunal in Appeals Nos. 1 and 5 of 1950 their Lordships have stated in unambiguous terms "We must however give due weight to the decision and should not depart from the principles laid down in the award, either wholly or in part, unless a better and a more satisfactory principle can be evolved or the *circumstances of the case demand* "(the italics are mine). Here I must emphasise that some peculiar circumstances demand a peculiar consideration of the question. The subject of the Appeal No. 1 of 1950 is the award passed by the Honourable Tribunal Bombay in 1948. The parties in the dispute were the Mill Owners' Association having 59 mills situated in Bomby and area and the workmen employed in these mills. Appeal No. 5 of 1950 was preferred by the workmen because the lower Tribunal exempted four of the mills from the payment of bonus. Hence both parties confronted the Honourable Appellate Tribunal how and in what manner the profit should be distributed among the contending parties. Gross profit for the year 1948 was Rs. 20·36 crores for all the mills and the question that had to be decided was how to distribute the profit. The Honourable Judges of the Labour Appellate Tribunal were requested by the parties to evolve a formula by which the surplus was to be found out, so as to enable the workers to get their bonus, from gross-income amounting to Rs. 20·36 crores from the consolidated balance sheets of all 59 mills. So under the circumstances and on the basis of facts and figures the Honourable Labour Appellate Tribunal has evolved a formula to find out the surplus available for distribution as bonus to the workers. They have stated in the course of the judgment "Essentially the quantum of bonus must depend upon the relative prosperity of the concern during the year under review and that the prosperity is probably reflected in the amount of residuary surplus ; the needs of labour at existing wages is also a consideration of importance, but we should make it plain that these are not necessarily the only consideration for instance no scheme of allocation of bonus could be complete if the amount out of which a bonus is to be paid is unrelated to employees efforts, and even when we have mentioned all these consideration we must not be deemed to have exhausted the subject. Our approach to this problem is motivated by the requirement that we should ensure and achieve industrial peace which is essential for the development and expansion of industry. This could be achieved by having a contended labour force on the one hand and on the other an investing public......" (1950 II. LLJ. 1247 at 1258). It is clear from the above passage that no scheme on allocation of bonus could be complete if bonus to be paid is unrelated to the efforts of the workers. In this case I have sufficiently elaborately stated that the workers exerting their maximum in the years 1949, 1950 and 1951 could not turn out profit for no fault of theirs and for reasons I stated above. It has also to be noted that the object of such adjudication is the establishment of industrial peace.

16. I am further constrained to say that those who were responsible sponsoring the resolution were motivated by the requirement that they should ensure and achieve industrial peace which is, essential for development and expansion of industry. Hence it is clear that the implementation of the resolution, not only did oppose the principles laid down by the Honourable Labou Appellate Tribunal in the Full Bench Formula but only supplements the implementation of the principles on the basis of which Full Bench Formula was evolved.

17. In conclusion I hold that in view of the peculiar circumstances of this case especially those prevailing in the years 1949-1950 and 1950-1951 the agreement between the parties as embodied in the resolution has to be applied. My approach to this question is motivated by the requirement that I should ensure and achieve industrial peace which is essential for the development and 'expansion of this industry. I must think this may be the reason why the Honourable Labour Appellate Tribunal in the Sugar Mills of Bihar and the workmen held that the rule of linking bonus to dividend could not be applied and linked to production and in this case also there was an agreement between the parties for payment of bonus linked to production (1951 I. LLJ. 469). So I hold that four percent of the total earnings of the worker in the years 1949-1950 and 1950-1951 will be paid as bonus for the workers. By total earnings I mean basic wages and dearness allowance.

18. BONUS FOR 1951-1952: The balance sheet for 1951-1952 which is Exhibit III shows that there is a profit of Rs. 93,282 and hence the Full Bench Formula has to be applied. In applying this formula I have taken into consideration certain points urged by Sri Divakaran on behalf of the workers. He has submitted that the cost of Block as on 1949 balance sheet should be taken into consideration because the balance sheet for the year and the bonus for the year 1947|1948 was settled by the Honourable Labour Appellate Tribunal in the appeal against the award in the Industrial Dispute No. 1 of 1124. It was taken in appeal and e Honourable Labour Appellate Tribunal confirmed bonus to th extent of 7 per cent. of the total earnings to the workers. B t Sri Ramalingam Iyer would argue that in arriving at the amount necessary for rehabilitation in the textile industry the Honourable Labour Appellate Tribunal has fixed 1947 as basis irrespective of the fact whether bonus for the year was settled or not In the evolution of 2·7 multiple the base year was taken as 1947 and hence the cost of Block as on 1947 has to be taken into consideration. Secondly Sri Divakaran would stress that the multiple of 2·7 should be reduced to 2·5 as Exhibit W would show that some new machines were added from 1947 and repairing have been done to the existing ones and hence such a higher ratio as 2·7 has to be reduced. But it has to be stated that the multiple of 2·7 has been arrived at after a scientific analysis of the whole question by the Honourable Labour Appellate Tribunal and there is no evidence in this case

to warrant a deviation. Sri Divakaran would also forcibly argue that liquid assets should be deducted in arriving at the amount of rehabilitation. He has based his arguments in the decision of the Honourable Labour Appellate Tribunal reported in the L. A. C. 1953 August, P. 445. The Honourable Labour Appellate Tribunal has discussed the question elaborately and held "We are therefore of the opinion that the Tribunal was right in holding that the liquid assets should be taken into account in the matter of rehabilitation etc." It is pointed out by Sri Divakaran that the amount under the heading in the balance sheets of 1947 (Exhibit Q)

	Rs.
General reserve fund as per last balance sheet ..	4,38,797-14-3
Depreciation fund as per last balance sheet plus provision for the year ..	5,50,696-12-0
Stock valuation reserve fund as per last balance sheet ..	1,00,000-0-0
Machinery renewal fund ..	1,60,000-0-0
Dividend equalisation fund ..	25,000-0-0

should be taken into account in finding out rehabilitation amount etc. It is pertinent to note that the above funds were available as liquid assets for the rehabilitation if the management wanted to do so. Hence it is only just that the above amounts are taken into account in arriving at the amount necessary for rehabilitation.

19. It should also be pointed out that in the application of the Full Bench Formula Sri. Divakaran would strongly urge that the maximum of 6 per cent. return on the paid-up capital of Rs. 2½ lakhs as well as on Rs. 5 lakhs on the equity shares cannot be allowed; because issue of 5000 shares of Rs. 100 each is issued on the profit earned by the mill as such, only they are bonus shares. It is on account of the efforts of the workmen that Rs. 5 lakhs was earned and was converted into bonus shares. On the basis of ruling reported in 1952 I. LLJ. 524 I allow 4 per cent. return on the capital of Rs. 7½ lakhs. Sri. Ramalingam Iyer would contend that the management can claim at least 2 per cent. return on the working capital which consists of a reserve of Rs. 2,50,797 and a depreciation fund of Rs. 8,38,302. This is strongly objected to by Sri. Divakaran on the ground that return on the depreciation fund is a double penalty for the workers. He would bring to my notice the observation of the Report of the Committee on Profit Sharing. The Committee has gone into the question of what is "Capital employed". Of the five formulae suggested to the committee the committee adopted the formula that the nearest practical approximation to capital employed in industry is the paid up capital plus reserves.

The Committee observed; "Considering all these factors we are of the opinion that paid-up capital plus reserves (including all future allocations of reserves) which are held for purposes of business is the nearest practicable approximation to capital employed in industry, and that this definition should be adopted. Reserves in this context will exclude depreciation reserves and will include only those reserves built out of profits on which taxes have been paid." It appears to me that there is considerable force in the point advanced by Sri Divakaran. It is only fair that only that part of the working capital which consists of reserves should be entitled to a fair return in the calculation of determining the surplus profit from which bonus can be allowed to the workmen. It has to be noted that the Hon: Labour Appellate Tribunal in its Full Bench Decision in Appeals Nos. 1 and 5 of 1950 has also allowed a return only on reserves employed as working capital and the same principle was applied in the decision of a Division of the Hon: Labour Appeliate Tribunal in Appeal No. 19 of 1950, Goodlaw Wall and Elephant Oil Mills Employees, Union *Vs.* Goodlaw Wall Ltd. Reducing rehabilitation fund from net profit and again deducting interest on the amount according to Sri Divakaran is a double penalty imposed on the workmen while providing nothing for the rehabilitation of workmen. More over EW2 has deposed that more than Rs. 3 lakhs has been spent on Blok Capital. Hence the amount under depreciation fund to the extent of 8·3 lakhs of Rupees cannot be included in the working capital on which a return of 2 per cent. is allowed. Sri Divakaran would strongly urge that managing agent's commission cannot be allowed. I have stated above that G. A. Ltd. in which Sri Gridharlal Amrithlal who is examined as EW2 is the Managing Director, is the managing agents of A. D. Cotton Mills. The working of G. A. Ltd. is only Rs. 800 while they have deposited huge amount in the A. D. Cotton Mills and they have not subscribed even one share which is explained by EW2 is a measure of security. The managing agents have got an allowance of Rs. 36,000 per year as remuneration over and above a commission of 20% of the profits. Sri Divakaran has pointed out that according to Tariff Committee Report more than 7½% commission cannot be allowed. Sri Ramalingam Iyer would contend that the remuneration of the managing agents depends upon the agreement between the parties. Anyhow there is no evidence in the case to interfere with the matter at present. Regarding the amount under taxation I have taken into account only Rs. 30,000 even though provision for taxation in the balance sheet is Rs. 43,784 inclusive of a balance of Rs. 2,692. There is an advance payment of Rs. 28,933 and on the bonus no tax need be paid. I have roughly included Rs. 30,000 in the calculation, on the ground that the advance payment provided in the balance sheet may be the margin of actual payment excluding tax on bonus.

20. Applying the Full Bench Formula the available surplus is arrived as follows:

Available Surplus

		Lakhs of Rs.
Net profit as per balance sheet	..	0.93
Add depreciation provided in the balance sheet	..	0·43
Add provision for taxation	..	0.41
	..	1·77
Less Rehabilitation amount necessary	..	0.70
	..	1.07
Less 4% return on 7½ lakhs (2/3 of the amount is made out of bonus shares 1952 I.L.L.J. 524)	..	0.30
	..	0.77
Less 2% return on reserves employed as working capital of 2½ lakhs (capital employed as defined by the Report of Profit Sharing Committee, depreciation reserves are excluded)	..	0.05
	..	0.72
Less provision for taxation which is allowed as Rs. 30,000	..	0.30
Balance	..	0.42

In calculating the amount of rehabilitation it is found as follows:

Rehabilitation Amount.

Cost of Block as on 1947 balance sheet Exhibit Q—excluding land		..	8·58
do.	multiple by 2·7	..	23·21
Less depreciation fund and machinery renewal fund (5·5 plus 1·6)		..	7·10
Less Reserve:—		..	4·30
(i) Stock valuation fund	Liquid Assets	..	1·00
(ii) Dividend equalisation fund		...	0·25
			10·56

Divided by 15 years 0·70

21. So roughly there is a surplus of Rs. 42,000. In this connection it has to be pointed out that with the worn out machinery the concern which was begun with a paid-up capital of only 2½ lakhs of Rupees and which according to EW2 could not attract public sympathy was able to exist and justifiably contributed to the share-holders dividend to the extent of 25% in 1945, 50% in 1946, 100% in 1947, 38% in 1948 and 15% in 1949 in which year the bonus shares comes to Rs. 5 lakhs. The bonus paid to the workers in 1945, 1946, 1947, 1948 and 1949 are 2·5% 4%, 3·6%, 7%, and 4% of the total earnings respectively. I am clearly of the view that in spite of all odds the workers have worked hard in the years and contributed to the prosperity of the concern. So on a consideration of the circumstances of this case and on principles of social justice I am inclined to allow Six and one fourth (6¼) per cent of the total wages (basic wages and dearness allowance) as bonus for the year 1952 (1951-1952) which I hope will establish ideal relationship between the parties.

22. I pass the award as specified above. Since Onam is a national festival the employer will appreciate the feelings of the workers and disburse at least 50% of the amount before the ensuing Onam.

23. This award will come into effect from the date of publication according to Section 17 of the Industrial Disputes Act of 1947.

Trivandrum,
30-8-1954.

K. N. Kunjukrishna Pillai,
Industrial Tribunal.

APPENDIX.

WW 1	Sri T. N. Janardhanan Nair,	Workers' witness.
EW 1	Sri T. David	Employer's witnesses.
EW 2	Sri Gridharlal Amrithlal	
EW 3	Sri D. A. Thakur	

Exhibits marked for the workers.

A	Balance Sheet of the mill for	1933
B	do.	1934
C	do.	1935
D	do.	1936
E	do.	1937
F	do.	1938
G	do.	1939

H	Proceedings of the Tripartite Labour Conference of	1946
H (a)	do. do.	1948
J	Balance Sheets etc. of the mill for	1940
K	do.	1941
L	do.	1942
M	do.	1943
N	do.	1944
O	do.	1945
P	do.	1946
Q	do.	1947
R	do.	1948
S	do.	1949
T	Statement of percentage of bonus paid from 1945 to 1952	
U	Statement of dividend per share	
W	Statement of amounts spent on replacement and capital expenditure from 1945 to 1952.	

Exhibits marked for the Employer.

I.	Balance Sheet of the mill for	1950
II.	do.	1951
III.	do.	1952
IV.	Copy of letter dated 8th July 1952 from the Quilon Textile Workers' Union, to the management.	
V.	Copy of letter dated 18-7-52 from the Assistant Labour Commissioner to the management.	
VI.	Copy of letter from the management to the Labour Commissioner.	
VII.	Copy of letter dated 13th August 1952 from the management to the Labour Commissioner.	
VIII.	Copy of letter dated 22nd August 1952 from the Labour Commissioner to the management.	
IX.	Copy of letter dated 24th August 1952 from the management to the Labour Commissioner.	
X.	Statement showing the Rehabilitation and remodernisation expenditure.	
XI.	Copy of the letter dated 14th October 1947 from the management to Messrs. Textool Co. Ltd., Coimbatore.	
XII.	Bill from Textool Co. Ltd., Coimbatore dated	19-4-1948.
XIII.	do. do.	21-8-1948.

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..a. ..e No. 44 dated 2nd November 1954.
Part I

Section iv

..o. H-5-7447|52|CS.

NOTIFICATION.

Jails Department.

PUBLICATION OF RULES.

In exercise of the powers conferred by Section 59 of the Travancore-Cochin Prisons Act, 1950 (XVIII of 1950), the Government hereby make the following rules.—

By order of
His Highness the Raj Pramukh,

Government Secretariat,
Home Section,
Trivandrum, 20th September, 1954.

B. V. K. MENON,
Chief Secretary to Government.

THE TRAVANCORE-COCHIN PRISON RULES, 1951.

CHAPTER I.

THE CENTRAL JAILS.

1. *Central Jails.* There shall be two Central Jails in the State of Travancore-Cochin one at Trivandrum and the other at Viyyur in the Trichur District. The Trivandrum Central Jail shall be a first class Central Jail having accommodation for more than 600 prisoners, and the Viyyur Central Jail shall be a second class Central Jail having accommodation for 600 or below 600 prisoners.

2. *Classes of persons confined in the Central Jails.* (a) Prisoners sentenced to imprisonment for periods of more than one month in the Districts of Trivandrum, Quilon and Kottayam shall, ordinarily be confined in the Central Jail, Trivandrum.

All under-trial prisoners committed to the Sessions Court of Trivandrum and all prisoners sentenced to imprisonment for whatever term by the several classes of criminal courts exercising jurisdiction in the City of Trivandrum as well as the Civil prisoners committed to the said jail by any of the Civil Courts shall also be confined in the Central Jail, Trivandrum.

(b) All prisoners sentenced to imprisonment by any criminal court in Trichur Town and all prisoners sentenced to imprisonment for periods of more than one month by criminal courts in the Trichur District as well as all civil prisoners committed to that Jail by any of the Civil Courts shall ordinarily be confined in the Central Jail, Viyyur.

(c) The following classes of prisoners shall also be confined in the Central Jails.

(i) Prisoners sent by transfer under orders of the Inspector General of Prisons.